

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3080
Administrative Law Judge Division
January 23, 2002

R E S O L U T I O N

RESOLUTION ALJ 176-3080. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on January 23, 2002, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3080 (01/23/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-12-040 VERIZON CALIFORNIA INC. (U 1002 C), to Recategorize its National Directory Assistance and Operated Assisted Services from Category II to Category III	Ratesetting	Ratesetting	YES
A02-01-001 CALMTEL USA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-01-002 CALIFORNIA WATER SERVICE COMPANY (U 60 W), for an order authorizing Applicant to issue and/or sell on or before December 31, 2005 not exceeding in aggregate amount \$250,000,000 of any combination of (1) shares of its common stock, (2) shares of its preferred stock, or (3) debt securities	Ratesetting	Ratesetting	NO
A02-01-003 COUNTY OF ALAMEDA, for an Order authorizing construction of a new public at-grade pedestrian and ADA compliant crossing across the Union Pacific Railroad corridor MP 29.1, UPRR, between the extension of H Street and the Union Pacific Railroad, Niles Subdivision mainline, in the District of Niles in the City of Fremont, Alameda County, State of California, P.U.C. Crossing ID No.1D-29	Ratesetting	Ratesetting	NO
A02-01-004 KERMEN TELEPHONE CO., (U 1012-C), to restructure intrastate rates and charges for telephone services furnished within the State of California	Ratesetting	Ratesetting	YES
A02-01-005 CAL-ORE TELEPHONE CO. (U 1006 C), for an Order authorizing it to issue notes in an amount not exceeding \$6,711,750, and to execute a related agreement and supplemental security instruments	Ratesetting	Ratesetting	NO
A02-01-008 WHOLESALE CARRIER SERVICES, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3080 (01/23/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-01-012 PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), for Authorization to Sell Electric Distribution and Certain Related Transmission Facilities serving the City of Patterson, the community of Crows Landing, and certain adjacent rural areas to the Turlock Irrigation District pursuant to Public Utilities Code Section 851 and for Approval of Service Area Agreement under Public Utilities Code Section 8101	Ratesetting	Ratesetting	YES
A02-01-013 EXCEL TELECOMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange Services combined Resale and Limited Facilities Basis in the State of California	Ratesetting	Ratesetting	NO
A02-01-014 BUDGET PHONE, INC., for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services within the State of California	Ratesetting	Ratesetting	NO
A02-01-015 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E), for Approval of Utility Retained Generation Cost Recovery Mechanism	Ratesetting	Ratesetting	YES
A02-01-017 ALLIED RISER OF CALIFORNIA, INC., COGENT COMMUNICATIONS GROUP, INC., for Authority to Transfer Control of Allied Riser of California, Inc. (U-6239-C), to Cogent Communications Group, Inc.	Ratesetting	Ratesetting	NO
A02-01-018 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Approval of Amendments to Power Purchase Contracts between [EDISON] and Seven Landfill Gas Biomass Projects (QFIDs 1103-1107, 1110, and 1111)	Ratesetting	Ratesetting	YES
A02-01-019 ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, (ACTA), for an order authorizing the construction of two railroad tracks in addition to the existing track under the existing Anaheim Street structure (CPUC number 114A-17.20A) in the City of Los Angeles	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3080 (01/23/02)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A02-01-020 GOLD LINE TELEMAGEMENT INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A02-01-021 CHINA QUANTUM COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Offer Resold Local Exchange Telephone Service	Ratesetting	Ratesetting	NO
A02-01-022 TELECOM MANAGEMENT, INC., dba PIONEER TELEPHONE, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO